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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,812

10/11/2005

Guido F. Smoorenburg

COCH-0131-US1

3611

30678

7590

06/30/2008

CONNOLLY BOVE LODGE & HUTZ LLP

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SUITE 1100

WASHINGTON, DC 20036

EXAMINER

HOLMES, REX R

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

06/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/518,812	SMOORENBURG, GUIDO F.	
	<b>Examiner</b>	<b>Art Unit</b>	
	REX HOLMES	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/22/04</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7, 20-4, 27-34 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Faltys et al. (U.S. Pat. 6,157,861 hereinafter “Faltys”).

3. Regarding claims 1-4, 20-22 and 38, Faltys discloses a method for fitting a cochlear implant with multiple channels that includes establishing an initial current using action potentials, and then adjusting the levels to conform to the comfort levels of the patient (e.g. Abstract, Figs. 3A-3B, Cols. 3-4). Faltys further discloses that the stimulator can be connected to a clinicians computer for direct interface between the clinician and the speech processor (e.g. Col. 7, 48-65; Col. 9, line 65 to Col. 10, line 7).

4. Regarding claims 7-14 and 27-34, Faltys discloses adjusting the initial parameters to conform to patient comfort levels by adding or subtracting current levels, thereby effectively shifting tilting or curving the levels of the parameters (Col. 13, lines 32 to Col. 14 line 53).

5. Regarding claim 23-24, Faltys discloses that the initial current level is established based on the measured action potentials (Col. 11, ll. 38-48).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5-6, 15-19, 25-26 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faltys.

Regarding claims 15-19 and 35-37, Faltys discloses that it uses known signals to test and fit the cochlear input, but fails to explicitly state that the signals are live speech, an artificial signal or a recorded signal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Faltys, with a live speech signal, a artificial signal or a recorded signal since it was known in the art that any of a number of signals can be used to provide the predictable result of creating a stimulation signal to produce a action potential to monitor and measure.

Regarding claims 5-6 and 25-26, Faltys discloses the claimed invention including that the current levels are set to a default level, but fails to explicitly state that the default levels were based on values that were researched and worked for a vast majority of recipients. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the initial current level as taught by Faltys, with an initial current level that was analyzed from a vast majority of people since it was known in the art that the default level should be one that works as a base line for a vast

majority of people and using one that works as a base line for a vast majority of people would provide the predictable result of allowing the clinician to quickly fit a cochlear implant as the values would be approximately the right value from the start.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REX HOLMES whose telephone number is (571)272-8827. The examiner can normally be reached on M-F 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. H./  
Examiner, Art Unit 3762

/George R Evanisko/  
Primary Examiner, Art Unit 3762